

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

MATTHEW POLLACK and)
JANE QUIRION, individually)
and as next friends of B.P.,)
)
Plaintiffs,)
)
v.) No. 2:13-cv-109-NT
)
REGIONAL SCHOOL UNIT 75,)
et al.,)
)
Defendants.)

SECOND SUPPLEMENTAL ORDER ON PLAINTIFFS' IDEA APPEALS

My July 14, 2015 order set forth a process for resolving the remainder of the Plaintiffs' appeal of a state due process hearing officer's decision in Maine IDEA Case Number 13.107. First Suppl. Order on Pls.' IDEA Appeals 2 (ECF No. 144).

To resolve the remainder of the Plaintiffs' IDEA appeal, the Court must decide: (1) whether the Plaintiffs' challenges to the asserted privileges justify *in camera* review of the documents at issue; (2) if so, whether any of the documents are non-privileged; and (3) if so, whether any such non-privileged documents, in concert with the evidence already in the record, establish that the District violated an IDEA procedural safeguard in a way that significantly impeded the right of Plaintiffs Pollack and Quirion to participate in the special education decision-making process, thereby constituting a redressable deprivation of a free appropriate public education. See 20 U.S.C. § 1415(b)(1), (f)(3)(E)(ii)(II).

First Suppl. Order on Pls.' IDEA Appeals 2.

I referred the first two of the above questions to Magistrate Judge John C. Nivison. First Suppl. Order on Pls.' IDEA Appeals 2. Judge Nivison subsequently reviewed the Defendants' privilege log and conducted *in camera* review of the documents listed therein. Order on Pls.' Request for Docs. 3 n.2 (ECF No. 152).

Following his review of the documents and consideration of the parties' written submissions, Judge Nivison sustained the Defendants' assertions of privilege. Order on Pls.' Request for Docs. 1, 6.

In the process of determining whether documents had been appropriately withheld, one non-privileged e-mail dated February 9, 2012 surfaced. The District explained that it did not identify and turn over this e-mail earlier because it does not contain B.P., Pollack, or Quirion's names. First Suppl. Order on Pls.' IDEA Appeals 1 n.1. Given Judge Nivision's determination that the Defendants' did not erroneously withhold any documents pursuant to an asserted privilege, the question I must answer is whether the February 9, 2012 e-mail, considered along "with the evidence already in the record, establish[es] that the District violated an IDEA procedural safeguard in a way that significantly impeded the right of Plaintiffs Pollack and Quirion to participate in the special education decision-making process, thereby constituting a redressable deprivation of a free appropriate public education." First Suppl. Order on Pls.' IDEA Appeals 2.

The document in question is a message from Kelly Allen (at the time the District's Autism Consultant) to Patrick Moore (the District's Director of Special Services) informing him that Quirion "was spotted at library today during scheduled field trip" and asking whether "we want to address this issue???" February 9, 2012 E-mail (ECF No. 133-2). Moore responded: "what is she looking for? to see if B is there? maybe I'll ask if the concern is that we are taking b on the outings." February 9, 2012 E-mail (ECF No. 133-2). The basic facts of the "spying" accusation were known to

Pollack on February 10, 2012 when either Moore or Allen told him that Quirion had been seen on the community field trip to the library. *See Order on Pls.' IDEA Appeals* 7. Thus, this February 9, 2012 e-mail would not have provided the Parents with any substantial new information. The District's failure to timely produce the February 9, 2012 e-mail did not significantly impede the Parents' right to participate in the special-education decision-making process.

CONCLUSION

For the reasons stated above, I **DENY** the Parents' remaining requests for relief with respect to Maine IDEA Case Number 13.107. Count I of the Second Amended Complaint (ECF No. 51) (2:13-cv-109-NT) is **DISMISSED**.

SO ORDERED.

/s/ Nancy Torresen
United States Chief District Judge

Dated this 27th day of January, 2016.